

EXHIBIT B

Michael Mitchell

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Sent: Wednesday, September 8, 2021 9:30 AM
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Subject: RE: IN RE PORK ANTITRUST LITIGATION - MDL, 0:21-md-02998-JRT-HB

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Judge Tunheim, the Winn-Dixie Plaintiffs respectfully provide this letter to clarify statements made by the Defendants in the Joint Status Report ("JSR"), submitted by email to the Court on August 2, 2021 (below).

In the Report, with respect to the limit on depositions applicable to the new MDL DAPs, Defendants argue that this issue was decided in the MDL case merely because the lone DAPs in the non-MDL case at the time that the 5 deposition limit was negotiated, the Winn-Dixie Plaintiffs, agreed to it. JSR, p. 13. First, of course, the Winn-Dixie Plaintiffs are not MDL DAPs and did not have the power to make an agreement binding on the MDL DAPs before the JPML acted and before the MDL DAPs were before this Court. In addition, being the only two DAPs in the case at the time before there was an MDL, the Winn-Dixie Plaintiffs did not believe that, in a practical sense, they had a "critical mass" to drive the negotiation on this issue. The situation is far different now with many MDL DAPs filing.

Furthermore, with attrition in their employee ranks, it is the experience of the Winn-Dixie Plaintiffs that, for them and only for them, the number of witnesses available to be deposed or that the Defendants truly want to depose is one or two, typically. Thus, based on all of the above, the Winn-Dixie Plaintiffs agreed for themselves, and only for themselves, to the 5 deposition limit.

Finally, the Winn-Dixie Plaintiffs, who are also in the Broiler Chicken Antitrust Litigation, agree that, based on their experience in that case, a limit of 2 depositions per DAP is the appropriate limit here (although the Winn-Dixie Plaintiffs are not seeking to renegotiate the 5 deposition limit as applied to them and which should be applied to them only).

For all of the above reasons, the Winn-Dixie Plaintiffs believe that the statement of the Defendants that the 5 deposition was already agreed to by the Winn-Dixie Plaintiff DAPs in this case should not be relied on in favor of the 5 deposition limit applying to the MDL DAPs in the recently established MDL.

Respectfully submitted, Patrick Ahern

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Subject: RE: IN RE PORK ANTITRUST LITIGATION - MDL, 0:21-md-02998-JRT-HB

Dear Chief Judge Tunheim,

Pursuant to the Court's July 14, 2021 Minute Entry, the parties in *In re Pork Antitrust Litigation*, 0:21-md-02998-JRT-HB (the "*Pork MDL Proceeding*"), hereby submit for the Court's consideration:

- (1) a proposed CMO (in Word), which contains both the language on which all parties agree and each side's proposed language on those issues in dispute (with the MDL Direct Action Plaintiffs' ("MDL DAPs") proposed language in blue bracketed text, and the Defendants' proposed language in red bracketed text); and
- (2) a joint statement containing the parties' respective positions on the parts of the proposed CMO about which they disagree, and Exhibits A to C referenced therein.

Respectfully submitted,

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Partner

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Counsel,

Chief Judge Tunheim approves the requested extension to 8/2/2021.

Thanks -



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Subject: IN RE PORK ANTITRUST LITIGATION - MDL, 0:21-md-02998-JRT-HB

CAUTION - EXTERNAL:

Dear Ms. Arent,

I write on behalf of the parties in the Pork MDL Proceeding, *In re Pork Antitrust Litigation*, 0:21-md-02998-JRT-HB, and the pre-existing Consolidated Actions, *In re Pork Antitrust Litigation*, Civil No. 18-cv-1776 (JRT/HB). In the Court's July 14, 2021 Minute Entry following the telephonic hearing with the parties earlier that day, the Court "directed counsel for all parties, in the MDL and the Consolidated Actions, to jointly draft an initial case management order for the MDL,

which should be emailed to chambers on or before Wednesday, July 28, 2021. If aspects arise that cannot be determined or agreed upon by the parties, then they can write short briefing materials, which the Court will consider.” See Dkt. 9 (0:21-md-02998), 835 (18-cv-1776). Since the July 14 conference, the parties have been working together on a joint CMO for the MDL. However, there are several issues about which the parties disagree. The MDL DAPs and Defendants jointly and respectfully request a short extension—until Monday, August 2, 2021—to submit to the Court via email to chambers: (1) a joint statement containing the parties’ respective positions on the parts of the proposed CMO about which they disagree; and (2) a proposed CMO, which will contain both the language on which all parties agree, as well as each side’s proposed language on those issues in dispute.

The parties have also been negotiating a protocol for the production of electronically stored information (“ESI Protocol”), including whether there should be any changes to the pre-existing ESI Protocol. We propose presenting to the Court any disputes as to changes to the pre-existing ESI Protocol that remain at the same time and in the same format; i.e., the parties will submit 1) a joint statement containing the parties’ respective positions on the parts of the proposed new ESI Protocol about which they disagree, if any; and 2) a proposed new ESI Protocol, which will contain both the language on which all parties agree, as well as each side’s proposed language on those issues in dispute, if any.

Respectfully,

Michael S. Mitchell

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